



MAYOR & COUNCIL COMMUNICATION

DATE: December 15, 2015
CONSENT
ITEM # 13

AGENDA ITEM: Rieder Property– Preliminary Plat Extension

SUBMITTED BY: Stephen Wensman, City Planner

REVIEWED BY: Clark Schroeder

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item City Planner
- Report/Presentation.....City Planner
- Questions from Council to Staff Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion Mayor & City Council
- Action on Motion Mayor Facilitates

SUMMARY AND ACTION REQUESTED: The City Council is being asked to consider a request by Mr. Rieder for Preliminary Plat Extension. The City Council approved Resolution 2015-056 granting preliminary plat approval on July 21, 2015. According to Lake Elmo City Ordinance 153.07 a subdivider of land must submit a final plat within 180 days after approval of preliminary plat or the plat will be considered void. Staff is recommending approval of the Preliminary Plat Extension.

Staff recommends approval of the request with the following motion:

“Move to adopt Resolution No. 2015-086 approving the Rieder (Lennar Diedrich) Townhouses preliminary plat extension for one year.”

BACKGROUND AND STAFF REPORT: The City Council approved Resolution 2015-056 granting preliminary plat approval for a 46-unit singled family attached (townhouse) development to be located on slightly over 15 acres of land immediately east of Lake Elmo Avenue and north of the Hunters Crossing development. The applicant, Mr. Rieder is requesting the extension to allow for more time to arrange bank financing and prepare for final plat.

As with previous extension considerations, the City Council has the right to reconsider. According to the City Attorney:

“The council can reconsider any action ...[but the] motion to reconsider must be brought by somebody who voted in the affirmative.... But, there is, however, the matter of what standards are to be applied in considering a reconsideration (must not be arbitrary, must not be capricious, must be fact-based) and the matter of whether intervening rights have accrued in the meantime (ie: whether the applicant has taken steps or materially changed its position after the first vote). Bottom line, absent a showing of materially changed circumstances, reconsideration can be raised, but a vote to effectuate it is likely not recommended”.

According to MN State Statutes, the applicant must have filed the approved plat or followed through with conditions, so even if the Council wishes to see something different happen on this land, it cannot compel such changes within a period of two years after the original plat approval. If the Council elects to not approve the extension, the developer can reapply for preliminary and final plat, and Council will have to approve the requests (as it would be very difficult to arrive at findings for denial when the subdivision has already been approved under existing regulations). For reference, the relevant statute reads as follows:

Statute 462.358

Subd. 3c. Effect of subdivision approval.

For one year following preliminary approval and for two years following final approval, unless the subdivider and the municipality agree otherwise, no amendment to a comprehensive plan or official control shall apply to or affect the use, development density, lot size, lot layout, or dedication or platting required or permitted by the approved application. Thereafter, pursuant to its regulations, the municipality may extend the period by agreement with the subdivider and subject to all applicable performance conditions and requirements, or it may require submission of a new application unless substantial physical activity and investment has occurred in reasonable reliance on the approved application and the subdivider will suffer substantial financial damage as a consequence of a requirement to submit a new application. In connection with a subdivision involving planned and staged development, a municipality may by resolution or agreement grant the rights referred to herein for such periods of time longer than two years which it determines to be reasonable and appropriate.

In summary, in considering the applicants request the City Council should consider whether there has been any intervening area-wide zoning or big land-use changes since the original approval of the plat. To deny, the City Council would need to cite some material fact. The Council’s decision cannot be arbitrary or capricious.

If denied, the Reider’s and/or their developer could go through the approval process again spending time and money (which would then restart their two-year protection clock). Staff’s valuable time would be taken to again review and provide reports, and the public hearings would be held for an item that essentially has a predetermined outcome. Accordingly, it is strongly recommended that City Council approve this item on the consent agenda and grant the requested one-year extension to file the approved final plat.

MORITORIUM: This development is not affected by the City's moratorium since it received preliminary plat approval prior to July 22, 2015.

FISCAL IMPACT:

- **5th Street:** The City will require that the applicant enter into a developer's agreement with the City to specify the financial responsibilities for various aspects of the subdivision and related public improvements. It is expected that the project will include the construction of the northern half of the segment of 5th Street to the east of Lake Elmo.
- **Municipal services and property taxes:** The developer is expected to pay the Water Availability Charge for the entire development at the time a final plat (\$138,000 per unit) and Sewer Accessibility Charge (\$138,000) similar to other developments that are connecting to the Municipal services. In addition, at the time of building permit issuance, water and sewer connection charges will be collected in the amount of \$2,000/unit (\$92,000). When fully developed, the property taxes will produce roughly $(\$350,000 \times 46) \div 0.002 = \$32,200$ in increased revenue per year.

SUMMARY AND ACTION REQUESTED: The City Council is being asked to consider a request for approval of a Preliminary Plat Extension for a 46-unit singled family attached (townhouse) development to be located on slightly over 15 acres of land immediately east of Lake Elmo Avenue and north of the Hunters Crossing development.

“Move to adopt Resolution No. 2015-086 approving the Rieder (Lennar Diedrich) Townhouses preliminary plat extension for one year.”

ATTACHMENTS:

1. Resolution No. 2015-086 approving the Rieder Preliminary extension for one year.
2. Resolution No. 2015-056 approving the preliminary plat
3. Lennar Diedrich Townhouses Preliminary Plat
4. City Council Packet 7-21-15